



**DOING BUSINESS
ELECTRONICALLY IN THE
AGE OF COVID-19**

Electronic contracts and electronic signatures are well accepted in Australia and elsewhere in particular circumstances.

Social distancing measures required to contain the spread of novel coronavirus has made e-business tools imperative to the ongoing function of many industries.

Emergency measures to permit a wider application of e-Contracts and e-Signing are being considered in a number of jurisdictions.

Now is as good a time as ever to consider how e-commerce methods could assist your business to survive and thrive in these changed trading conditions.

► IF YOU LIKE THIS,
WE LIKE YOU.

We believe in sharing knowledge, experience and ambitions so that together we can build something bigger than ourselves and better than what came before.

Sound good? Let's chat.

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Electronic contracts and electronic signatures are generally accepted as giving rise to binding contracts at law, where used appropriately. E-commerce is supported by the Electronic Transactions Acts in all States and Territories, however electronic contracts arise and are binding even without the support of these laws.

How Does a Contract Arise Electronically?

The courts have also shown that they are unlikely to declare a contract to be non-binding simply because it is electronic. You can legally and validly enter into an agreement (and therefore make it binding) not only by signing in wet ink but also electronically, including by:

- Accepting terms and conditions by a checkbox or by clicking "I accept"
- Signing off and sending an email containing contract terms
- Typing your name into a document intended to be an agreement
- Signing your name electronically to create an image of your signature, eg using a stylus or your finger
- Affixing a digital image of your signature to a document, whether affixed yourself or by another person with your express written authority
- Signing using a recognised, secure digital signing platform such as DocuSign or AdobeSign

This generally gives confidence that business and contracts can be conducted electronically.

Limitations of e-Contracts and e-Signatures

e-Contracts can only be used for certain types of agreements. In some jurisdictions it is not yet lawful to use e-Contracts and e-Signatures for a number of documents and instruments, like **deeds, wills, and registry forms** such as those required for land titles.

Parties also do not have the benefit of certain warranties provided in the *Corporations Act 2001* (Cth) when companies purport to contract electronically.

Further, where a person's signature requires appropriate witnessing, such as when settling a trust deed or exercising a power of attorney, it is unlikely that an electronic method will be valid.

Want To Know More?

When using e-Contracts you must be sure that your method and documents:

- doesn't impede the certainty of the terms of the Contract
- creates a binding Contract
- provides certainty for all parties as to when the Contract arises
- provides an appropriate level of security for the parties, especially where signatures and sensitive information may be exposed to unsecure networks and email servers
- consider whether it is prudent to have an individual's signature witnessed
- do not violate any legislative or common law requirement for original documents to be signed

To continue to conduct your deals safely in these unprecedented times, ask us how you can implement electronic contracting and signing methods in your business.